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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re G.E., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

G.E.,

Defendant and Appellant.

F063188

(Super. Ct. No. 510995)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Nan
Cohan Jacobs, Judge.

Cecelia J. Rodriquez, under appointment by the Court of Appeal, for Defendant
and Appellant.

* Before Cornell, Acting P.J., Kane, J., and Poochigian, J.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Tiffany J. Gates, Deputy Attorneys General, for Plaintiff and Respondent.

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STATEMENT OF THE CASE

On July 12, 2010, appellant, G.E., waived his rights and admitted allegations in a petition filed pursuant to Welfare and Institutions Code section 602¹ that he possessed ecstasy (Health & Saf. Code, § 11377, subd. (a), count one) and less than one ounce of marijuana (Health & Saf. Code, § 11357, subd. (b), count two). At the conclusion of the disposition hearing on August 11, 2010, appellant was adjudged a ward of the court, placed on formal probation, and ordered to serve a term of 45 days in juvenile hall.

Petitions were filed on December 27, 2010, and January 11, 2011, alleging appellant committed separate residential burglaries. On January 27, 2011, appellant admitted one burglary allegation. The second burglary allegation was dismissed with a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754. At the disposition hearing on February 10, 2011, the court kept appellant as a ward of the court, committed him to juvenile hall for 90 days, and ordered appellant into Drug Court Review.

On March 16, 2011, a petition was filed pursuant to section 777 alleging that appellant violated his curfew, failed to attend school, and his whereabouts were unknown. A bench warrant was issued for appellant's arrest. When appellant was arrested, he was in possession of 1.8 grams of marijuana. Appellant admitted the allegations and was committed to juvenile hall for 120 days with nine days of custody credits. Appellant was authorized to serve at least 30 days on electronic monitoring. Appellant's maximum term of confinement was 82 months.

The court granted a petition from the probation department on May 17, 2011, to permit appellant to participate in the House Arrest Program.² On May 23, 2011, a pickup

¹ Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

² The clerk's minute order has an entry indicating appellant's confinement was a House Arrest Program. The probation department referred to this same program as the

and hold was placed on appellant for violating HAP. Appellant failed to appear for Drug Court Review on June 22, 2011. A new petition was filed pursuant to section 777 alleging that appellant failed to participate in a substance abuse treatment program, tested positive for marijuana, absconded from home, and failed to appear in court. On July 22, 2011, appellant admitted the allegations.

At the disposition hearing on August 5, 2011, the court set an aggregated maximum term of confinement of 80 months for all offenses and ordered appellant to continue as a ward of the court. The court continued appellant on probation. The court noted appellant had a history of running away and ordered a 293-day commitment to juvenile hall with custody credits of 17 days. The court noted that appellant's prior custody credits from prior petitions totaled 192 days. The court ordered no "good-time credits or early release," and appellant's detention until his 18th birthday – May 7, 2012.

Appellant contends, and respondent concedes, that the juvenile court failed to grant him custody credits for the 15 days appellant was confined prior to August 5, 2011. The petition, juvenile hall detention log, and the return on the bench warrant, all state that appellant was arrested on July 20, 2011. Appellant was, according to the parties, only granted credits of 15 days for this confinement because the juvenile hall detention log showed appellant in juvenile hall for two days, not 17 days. Respondent concedes that appellant was not granted 15 days of custody credits for his most recent term of confinement. Respondent further argues, however, that six days of custody credits must be deleted because appellant was in HAP for six days from May 18, 2011, until May 23, 2011, when he was released from juvenile hall. This time was not reflected in the juvenile hall detention log as HAP, but was reflected as HAP in other court documents.

House Confinement Program (HCP). We will refer to the House Arrest Program hereinafter as HAP.

The parties contend that appellant is entitled to 192 days of custody credits plus an additional 15 days (appellant) or an additional 9 days (respondent).³ We will order a modification of appellant's total custody credits on the aggregated petitions, but not as calculated by either party.

DISCUSSION

Custody Credits for Current Petition

The juvenile court committed appellant to juvenile hall for 293 days, minus 17 days of custody credits for his confinement in juvenile hall based on the most recent petition. The court ordered appellant to stay in juvenile hall, without any custody credits from previous confinements in juvenile hall based on prior petitions, until his eighteenth birthday on May 7, 2012.

The time span between August 5, 2011, and May 7, 2012, is 276 days. If one adds the 17 days of custody credits that the court awarded appellant to 276 days, the sum equals 293 days, the term of appellant's commitment to juvenile hall ordered by the juvenile court.

The 17 days of custody credits based on appellant's most recent confinement in juvenile hall, just prior to the disposition hearing, are reflected in both the juvenile court's express orders, and the clerk's transcript. The juvenile court stated more than once during the disposition hearing that appellant was not to receive custody credits from prior commitments to juvenile hall for appellant's current juvenile hall commitment. The court granted appellant a full 17 days of custody credits for the time appellant was confined in juvenile hall from July 20, 2011, through August 5, 2011. We agree with the parties that the juvenile court had to aggregate the predisposition custody credits attributable to

³ Because the only contention on appeal concerns appellant's custody credits, we do not recount the facts of appellant's offenses.

appellant's aggregated maximum term of confinement in a state juvenile facility of 80 months. (*In re Eric J.* (1979) 25 Cal.3d 522, 536-537; *In re Stephon L.* (2010) 181 Cal.App.4th 1227, 1232.)

Custody Credits for Prior Petitions

The juvenile hall detention log reflected many more days than 192 days for appellant's prior commitments, but the detention log included terms of HAP for which appellant is not entitled to custody credits.⁴ (*In re Randy J.* (1994) 22 Cal.App.4th 1497, 1504-1506 [juvenile not entitled to custody credits for commitments to nonsecure facilities].) The juvenile hall detention log also failed to refer to the time span between May 18, 2011, and May 23, 2011, as HAP. Thus, the 192 days of custody credits based on prior petitions and commitments to juvenile hall should be reduced six days to 186 days.

The 192 day figure also includes two days that appellant spent in juvenile hall for the current petition. There are interlineations on the juvenile hall detention log that appear to be made by either the probation department or the juvenile court. To keep the computation of different periods of confinement consistent, we will subtract two additional days from the current petition that are included in the 192 day figure, as well

⁴ The juvenile hall detention log showed total custody credits of 239 days. The parties agree that 47 days were HAP, or HCP, as denoted in the log, for which appellant was in home custody and therefore not entitled to credits. Subtracting 47 from 239 yields a sum of 192 days. The log, however, failed to note six HAP days between May 18, 2011, and May 23, 2011. The log accurately reflects that appellant was granted a day of custody credit for May 17, 2011, for the time he was in juvenile hall prior to his release.

In his reply brief, appellant disagrees with respondent that his confinement between May 18, 2011, and May 23, 2011, was HAP because HAP credit was otherwise noted on his juvenile hall detention log and was not so noted for this time frame. We agree with respondent, however, that there was a hearing and juvenile court order on May 17, 2011, placing appellant on HAP. Appellant was not entitled to those six days of custody credits for his home confinement.

as the six days from the May 2011 HAP, and find that appellant was entitled to 184 days of custody credits from his earlier sustained petitions.

Adding Total Custody Credits

Because the juvenile court aggregated appellant's maximum term of confinement based on the current and prior petitions, the court must also total appellant's custody credits from all terms of confinement. Appellant's total custody credits on all earlier sustained petitions is 184 days, plus 17 days of custody credits on the current petition, for a total of 201 days of custody credits on all sustained, aggregated petitions.

DISPOSITION

The juvenile court's order awarding 192 days of custody credits based on previous petitions and commitments to juvenile hall is modified to reflect that appellant's total custody credits are 201 days, with 17 days of credits on appellant's commitment of 293 days in juvenile court. The case is remanded for the juvenile court to amend the minutes of the hearing on August 5, 2011, to reflect this change. The juvenile court's orders are otherwise affirmed.